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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/891,246	06/27/2001	Jun Miura	SON-2150	1558
23353	7590	01/13/2004	EXAMINER	
RADER FISHMAN & GRAUER PLLC LION BUILDING 1233 20TH STREET N.W., SUITE 501 WASHINGTON, DC 20036			LEURIG, SHARLENE L	
			ART UNIT	PAPER NUMBER
			2879	

DATE MAILED: 01/13/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/891,246	Applicant(s) MIURA ET AL.	
	Examiner Sharlene Leurig	Art Unit 2879	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 August 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 29-50 is/are pending in the application.
- 4a) Of the above claim(s) 37-50 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 29-36 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 29-50 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 June 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s) _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

1. The amendment filed on August 21, 2003 has been entered and acknowledged by the examiner. Claims 30 and 36 have been amended and claims 49 and 50 have been added.

Election/Restrictions

2. Newly submitted claims 49 and 50 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: the elected group consisting of claims 29-36 is directed to a flat cathode ray tube. Newly presented claims 49 and 50 are directed to a flat cathode ray tube apparatus having a substrate with a transfer foil.

The previously elected group and the newly presented group are related as apparatus and product made. The inventions in this relationship are distinct if either or both of the following can be shown: (1) that the apparatus as claimed is not an obvious apparatus for making the product and the apparatus can be used for making a different product or (2) that the product as claimed can be made by another and materially different apparatus (MPEP § 806.05(g)). In this case the flat cathode ray tube can be made by an apparatus that does not comprise a transfer foil.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 49 and 50 are withdrawn from

consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 29-36 stand rejected under 35 U.S.C. 102(b) as being anticipated by Kato et al. (JP 11-096948) (of record).

Regarding claim 29, Kato discloses a flat cathode ray tube having a grid layer (Figure 1, element 2) described in paragraph 0013, a reflective layer (3) described in paragraph 0008, and a fluorescent layer (4), described in paragraph 0014, which are laminated and formed on the inner side of a panel (paragraph 0007).

Regarding claim 30, Kato discloses a flat cathode ray tube having a grid layer (Figure 1, element 2) described in paragraph 0013, a reflective layer (3) described in paragraph 0008, and a fluorescent layer (4), described in paragraph 0014, which are laminated and formed on the inner side of a panel (paragraph 0007), wherein the reflective layer is formed at the outer side of the circumference of the fluorescent layer where the outer circumference is determined to be the side facing the screen panel, as in the applicant's disclosure, and where circumference is defined as "the external boundary or surface of a figure or object".

Regarding claims 29 and 30, the Examiner notes that the claim limitation of the layers being obtained by means of transferring them from a transfer foil is drawn to a process of manufacturing, which is incidental to the claimed apparatus. It is well established that a claimed apparatus cannot be distinguished over the prior art by a process limitation. Consequently, absent a showing of a difference between the claimed product and the prior art, the subject product-by-process claim limitation is not afforded patentable weight (see MPEP 2113).

Regarding claims 31 and 32, the reflective layer is formed of a white inorganic layer (paragraph 0008).

Regarding claims 33 and 34, the reflective layer is formed of a titanium oxide layer (paragraph 0009).

Regarding claim 35, Kato discloses a flat cathode ray tube having an electrically conductive reflective layer (paragraph 0012) and a fluorescent layer (paragraph 0014) laminated and formed at an inner side of a panel.

Regarding claim 35, the Examiner notes that the claim limitation of the layers being obtained by means of transferring them from a transfer foil is drawn to a process of manufacturing, which is incidental to the claimed apparatus. It is well established that a claimed apparatus cannot be distinguished over the prior art by a process limitation. Consequently, absent a showing of a difference between the claimed product and the prior art, the subject product-by-process claim limitation is not afforded patentable weight (see MPEP 2113).

Regarding claim 36, the reflective layer (Figure 1, element 3) is formed at the outer side of the circumference of the fluorescent layer (4), where the outer circumference is determined to be the side facing the screen panel, as in the applicant's disclosure, and where circumference is defined as "the external boundary or surface of a figure or object".

Response to Arguments

5. Applicant's arguments filed on August 21, 2003 have been fully considered but they are not persuasive. The applicant has argued that a full response to the examiner's rejection cannot be made, as no English translation of the Japanese reference provided by the applicant was provided by the examiner. An effort was made to supply this translation in the previous office action. Another copy is provided herewith. In the case that this secondary copy is not received by the applicant, the examiner directs the applicant to the Japanese Patent Office's web site, which provides English translations of published patent material. The address of that web site is http://www.ipdl.jpo.go.jp/homepg_e.ipdl. In any case in the future where the applicant does not receive a copy of a translation, the applicant is instructed to contact the examiner as soon as possible to enable the applicant to make a complete response to the office action. The examiner's phone number is provided below.

The applicant has further traversed the examiner's assertion that a process of manufacturing limitation need not be afforded patentable weight in the examination of a product claim. The applicant has argued that the MPEP chapter and section cited by the

examiner is insufficient to bolster this assertion, and has requested an explanation of this assertion in light of 35 USC 102(b). While '102(b) does not explicitly prohibit the mixing of two statutory classes of invention, the examiner maintains the assertion that a process limitation in a product claim does not in itself overcome a reference which teaches all the product limitations, since the claim is directed to the structure of the product, and not the means by which the product was produced.

Therefore the rejection of claims 29-36 is maintained.

Conclusion

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.


Art Unit: 2879

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sharlene Leurig whose telephone number is (703)305-4745. The examiner can normally be reached on Monday through Friday, 8:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nimesh Patel can be reached on (703)305-4794. The fax phone number for the organization where this application or proceeding is assigned is (703)308-7382.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-0956.

Sharlene Leurig



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